रजिस्ट्री सं० डी० 221 REGISTERED NO. D. 221

भारत का राजपत्र
The Gazette of India
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 46] नई दिल्ली, मंगलवार, अगस्त 22, 1972/श्रावण 31, 1894
No. 46] NEW DELHI, TUESDAY, AUGUST 22, 1972/SRAVANA 31, 1894

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिस से कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 22nd August 1972/Sravana 31, 1894 (Saka)

The following Acts of Parliament received the assent of the President on the 21st August, 1972, and are hereby published for general information:—

THE INDIAN TELEGRAPH (AMENDMENT) ACT, 1972
No. 38 OF 1972

[21*st August*, 1972.]

An Act further to amend the Indian Telegraph Act, 1885.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:— Short title.

1. This Act may be called the Indian Telegraph (Amendment) Act, 1972.

13 of 1885. 2. For section 5 of the Indian Telegraph Act, 1885, the following section shall be substituted, namely:— Substitution of new section for section 5.

"5. (*1*) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do, take temporary possession (for so long as the public emergency exists or the interest of the public safety requires the taking of such action) of any telegraph established, maintained or worked by any person licensed under this Act. Power for Government to take possession of licensed telegraphs and to order interception of messages.

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government

or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.".

THE PAYMENT OF GRATUITY ACT, 1972

NO. 39 OF 1972

[21*st August*, 1972.]

An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines oilfields, plantations ports, railway companies, shop or other establishments and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Payment of Gratuity Act, 1972. Short title, extent, application and commencement.

(*2*) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(*3*) It shall apply to—

(*a*) every factory, mine, oilfield, plantation, port and railway company;

(*b*) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(*c*) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

(*4*) It shall come into force on such date as the Central Government may, by notification, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "appropriate Government" means,—

(*i*) in relation to an establishment—

(*a*) belonging to, or under the control of, the Central Government,

(*b*) having branches in more than one State,

(*c*) of a factory belonging to, or under the control of, the Central Government,

(*d*) of a major port, mine, oilfield or railway company, the Central Government,

(*ii*) in any other case, the State Government;

(*b*) "completed year of service" means continuous service for one year;

(*c*) "continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or a lock-out or cessation of work not due to any fault of the employee concerned, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

Explanation I.—In the case of an employee who is not in uninterrupted service for one year, he shall be deemed to be in continuous service if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than—

(*i*) 190 days, if employed below the ground in a mine, or

(*ii*) 240 days, in any other case, except when he is employed in a seasonal establishment.

Explanation II.—An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than seventy-five per cent. of the number of days on which the establishment was in operation during the year;

(*d*) "controlling authority" means an authority appointed by the appropriate Government under section 3;

(*e*) "employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity,

45 of 1950. 46 of 1950. 62 of 1957. or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957.

Explanation.—In the case of an employee, who, having been employed for a period of not less than five years on wages not exceeding one thousand rupees per mensem, is employed at any time thereafter on wages exceeding one thousand rupees per mensem, gratuity, in respect of the period during which such employee was employed on wages not exceeding one thousand rupees per mensem, shall be determined on the basis of the wages received by him during that period;

(*f*) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—

(*i*) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(*ii*) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(*iii*) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

63 of 1948. (*g*) "factory" has the meaning assigned to it in clause (*m*) of section 2 of the Factories Act, 1948;

(*h*) "family", in relation to an employee, shall be deemed to consist of—

(*i*) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any,

(*ii*) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any:

Provided that if a female employee, by a notice in writing to the controlling authority, expresses her desire to exclude her husband from her family, the husband and his dependent parents shall no longer be deemed, for the purposes of this Act, to be included in the family of such female employee unless the said notice is subsequently withdrawn by such female employee.

Explanation.—Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him

shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee;

(*i*) "major port" has the meaning assigned to it in clause (*8*) of section 3 of the Indian Ports Act, 1908; 15 of 1908.

(*j*) "mine" has the meaning assigned to it in clause (*j*) of sub-section (*1*) of section 2 of the Mines Act, 1952; 35 of 1952.

(*k*) "notification" means a notification published in the Official Gazette;

(*l*) "oilfield" has the meaning assigned to it in clause (*e*) of section 3 of the Oilfields (Regulation and Development) Act, 1948; 53 of 1948.

(*m*) "plantation" has the meaning assigned to it in clause (*f*) of section 2 of the Plantations Labour Act, 1951; 69 of 1951.

(*n*) "port" has the meaning assigned to it in clause (*4*) of section 3 of the Indian Ports Act, 1908; 15 of 1908.

(*o*) "prescribed" means prescribed by rules made under this Act;

(*p*) "railway company" has the meaning assigned to it in clause (5) of section 3 of the Indian Railways Act, 1890; 9 of 1890.

(*q*) "retirement" means termination of the service of an employee otherwise than on superannuation;

(*r*) "superannuation", in relation to an employee, means,—

(*i*) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and

(*ii*) in any other case, the attainment by the employee of the age of fifty-eight years;

(*s*) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Controlling authority.

3. The appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different controlling authorities may be appointed for different areas.

Payment of gratuity.

4. (*1*) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(*a*) on his superannuation, or

(*b*) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs.

Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(*2*) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

(*3*) The amount of gratuity payable to an employee shall not exceed twenty months' wages.

(*4*) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(*5*) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(*6*) Notwithstanding anything contained in sub-section (*1*),—

(*a*) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(*b*) the gratuity payable to an employee shall be wholly forfeited—

(*i*) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(*ii*) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Power to exempt.

5. The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

Nomination.

6. (*1*) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (*1*) of section 4.

(*2*) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

(*3*) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

(*4*) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

(*5*) A nomination may, subject to the provisions of sub-sections (*3*) and (*4*), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.

(*6*) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(*7*) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

Determination of the amount of gratuity.

7. (*1*) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable.

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

Explanation.—Where there is a dispute with regard to any matter specified in this clause the employee may make an application to the controlling authority for taking such action as is specified in clause (b).

(b) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee, and, if as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.

(c) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(d) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— 5 of 1908.

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code. 45 of 1860.

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

Recovery of gratuity.

8. If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at the rate of nine per cent. per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Penalties.

9. (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule or order made thereunder shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both:

Provided that where the offence relates to non-payment of any gratuity payable under this Act, the employer shall be punishable with imprisonment for a term which shall not be less than three months unless the court trying the offence, for reasons to be recorded by it in writing, is of opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice.

Exemption of employer from liability in certain cases.

10. Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence:

Provided that in seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls

in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor:

Provided further that, if the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

Cognizance of offences.

11. (*1*) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government:

Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a magistrate having jurisdiction to try the offence.

(*2*) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

Protection of action taken in good faith.

12. No suit or other legal proceeding shall lie against the controlling authority or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Protection of gratuity.

13. No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Act to override other enactments, etc.

14. The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

Power to make rules.

15. (*1*) The appropriate Government may, by notification, make rules for the purpose of carrying out the provisions of this Act.

(*2*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or

be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

K. K. SUNDARAM,
Joint Secretary to the Govt. of India.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1972